Intermec Technologies Corp. v. Palm, Inc.

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# EXHIBIT A

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

| | | |
|---|---|---|
| CLRB HANSON INDUSTRIES, LLC, etc., et al., | ) | |
| Plaintiffs, | ) | |
| v. | ) | Case No. 05-03639 JW |
| GOOGLE, INC., | ) | |
| Defendant. | ) | |

30(b)(6) DEPOSITION OF BRETT R. HANSON

August 18, 2006

228010

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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CLRB HANSON INDUSTRIES, LLC d/b/a INDUSTRIAL PRINTING, and HOWARD STERN, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

GOOGLE, INC.,

Defendant.

-----------------------------------x

Case No. 05-03639 JW

Confidential Portions Bound Separately

August 18, 2006

9:45 a.m.

30(b)(6) VIDEOTAPED DEPOSITION of CLRB HANSON INDUSTRIES d/b/a INDUSTRIAL PRINTING by BRETT R. HANSON, taken by Defendant, pursuant to notice, held at the offices of Thacher Proffitt & Wood, 2 World Financial Center, New York, New York, before Amy E. Sikora, CRR, CSR, RPR, Certified Realtime Reporter, Certified Shorthand Reporter, Registered Professional Reporter, and Notary Public within and for the State of New York.

A P P E A R A N C E S:

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San Francisco, CA 94107-1909

BY: DAVID T. BIDERMAN, ESQ.

M. CHRISTOPHER JHANG, ESQ.

ALSO PRESENT:

THOMAS DELVECCHIO, Videographer

10:05 business with Google, had industrial printing
10:05 used any other on-line advertising services?
10:05 A. Yes, sir.
10:05 Q. What were those?
10:05 A. The ones I can recall are Yahoo,
10:05 which was Overture, Ah-Ha. I think that may
10:05 have been the extent of the -- the extent of
10:05 them that I can recall.
10:05 Q. Okay. And what type of business
10:05 is Industrial Printing engaged in?
10:05 A. Printing services.
10:05 Q. What type of printing services?
10:05 A. Printing on three-dimensional
10:05 substrates.
10:05 Q. And is that the same type of
10:05 business that Hanson Industries is engaged
10:06 in?
10:06 A. I'm not sure of the full extent
10:06 of what Hanson Industries does.
10:06 Q. Does Hanson Industries do
10:06 printing on three-dimensional substrates?
10:06 A. I'm not sure if they do at this
10:06 point.
10:06 Q. And how about CLRB Hanson, does

Q. Okay. And between the time of July 2002 and the time you signed this affidavit in July 20th, 2005, you continued to use the Google AdWords program; correct?

A. Can you ask that question again, please.

Q. Yeah, sure.

Between the time of July 2002 when you signed on for the AdWords program and July 20th, 2005, when you signed this

B. Hanson

affidavit, you used the Google AdWords program during that time period; correct?

A. Yes, sir.

(Continued in confidential portion of transcript.)

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11:29 a button there where you can go cost previous
11:29 day, previous seven days, 30 days, 60 days,
11:29 and all-time costs.
11:29 Q. Okay. And yours defaults to the
11:29 current day?
11:29 A. Yes, sir.
11:29 Q. And so your practice is then you
11:29 look at that current day information;
11:29 correct?
11:29 A. Yes.
11:29 Q. And then what do you look at on
11:29 that current day information?
11:29 A. What our costs are associated
11:29 with internal review of what a client may
11:30 tell me that they've received for orders or
11:30 flow of leads, et cetera.
11:30 Q. Okay. And then what causes you
11:30 to implement the pause?
11:30 A. Lack of capacity within the
11:30 plant. The costs -- we've met our targeted
11:30 return on investment at that point and
11:30 there's no need to continue expending money.
11:30 Q. Anything else?
11:30 A. That's pretty much it.

11:42 typically two.

11:42 Q. And the other one was still
11:42 active; correct?

11:42 A. Yes.

11:42 Q. And under the contract
11:42 decorating campaign, there were four ad
11:42 groups paused. Do you see that?

11:42 A. Correct.

11:42 Q. And then how many total ad
11:42 groups were there, if you can recall, under
11:42 that particular campaign?

11:43 A. Well, I think there's only two.
11:43 I mean, under which campaign? Contract
11:43 decorating?

11:43 Q. Yes, sir.

11:43 A. I think there's only five.
11:43 There's the active and then the paused.
11:43 There is not --

11:43 Q. Okay. So -- I'm sorry, I
11:43 interrupted you.

11:43 A. There is only the active plus
11:43 the pause. So your account -- the team there
11:43 may be multiple ad groups, for example. But
11:43 they're all running.

11:43 Q. And is it your practice to pause
11:43 ad groups or campaigns?
11:43 A. Campaigns.
11:43 Q. And why's that?
11:43 A. Because -- campaigns would stop
11:43 the whole campaign. We either feel
11:43 comfortable with the results so we turn off
11:43 the campaign to limit our cost that day. For
11:44 example, we pause -- we pause -- I have
11:44 clients in CLRB and Hanson and SECOA paused
11:44 on the weekends. We don't run campaigns on
11:44 the weekend.
11:44 Now Google has a feature where
11:44 you can run on a 12- and 24-hour clock, where
11:44 you can turn on your campaign. Each
11:44 individual campaign can be tailored to run on
11:44 the 15-minute based on a 12- and a 24-hour
11:44 clock tied to your -- your time zone. So we
11:44 have it marked as central standard time and
11:44 we run our -- I have -- Hanson Industries has
11:44 asked me to run their campaigns approximately
11:44 65 percent of the time. That's a feature
11:44 that Google's added so you don't have to go
11:44 in and on all the time turning it off and on.

But we still go in to monitor the -- the -- that's a good feature that they have. I'm surprised they haven't figured out this cost yet. So we don't go over the cost.

Q. And in this instance you'd paused certain ad groups, do you see this?

A. Yes.

Q. Rather than campaigns. What -- what caused you to pause just those ad groups?

A. They were ineffective ad groups that were in there that we may still use in the future, but rather than deleting the ad group, because once you deleted the ad group you have to rebuild the ad. We just paused it all together and maybe go back to it and maybe not. But we have found that those certain ad groups don't generate the click-through rate.

We try to maintain a click-through rate of greater than 6.5 percent. And sometimes we do and sometimes we don't.

Q. And when you say "we," do you

12:05 (Exhibit No. 31, Google AdWords campaign management, 7/8/05, bearing Bates Nos.~P0114 through P0115, marked for identification as of this date.)

12:06 Q. And that's a document, Google AdWords campaign management, July 8, 2005; is that correct?

12:06 A. Yes, sir.

12:06 Q. And all these are for -- all these ones that we've marked, that is, 27, 28, 29, 30, all of those are for CLRB Hanson; is that correct?

12:06 A. Yes, sir.

12:06 Q. And are all the campaigns that are shown for CLRB Hanson?

12:06 A. Yes, sir.

12:06 Q. And Exhibit 31 is the same type of document I just described -- I just mentioned, 27, 28, 29, and 30?

12:06 A. Yes, sir.

12:06 Q. Then the next document is Exhibit 32, which is a one-page document Bates numbered P0116.

12:07 (Exhibit No. 32, billing

B. Hanson

of days in the month, multiplied that by the daily budget, do you know whether that amount would exceed the total cost for that particular number of days?

A. I do not.

Q. So is it your belief, based on your interpretation of your legal relationship with Google, that during the period specified, 7/31/02 through 11/2/05, that you paid $16,507.27 more than you should have?

A. Yes, sir.

Q. And there are some instances, for example, looking at page 43 of 56 or Bates No. 0494 --

A. Okay.

Q. -- there are some instances where the percent column, the overcharge percentage, the second to the right, is in excess of 20 percent; do you see those?

A. Yes.

Q. For example, February 24, 2005, it's listed as being 51 percent?

A. Yes.

A. I'm looking at the correspondence between -- on Bates stamp P0331 to P0332.

Q. Okay. Why don't we mark that next in order so everybody knows what we're talking about. That looks like it's part of a longer e-mail string, Mr. Hanson. Why don't we just mark the whole string which begins at 329.

A. Okay.

MR. BIDERMAN: We'll mark as next in order page 329 through 333.

(Exhibit No. 39, document beginning with e-mail, AdWords support, April 1, 2005, 7:47 p.m., bearing Bates Nos. 329 through 333, marked for identification as of this date.)

Q. Exhibit 39. And it begins with an e-mail, AdWords support, April 1, 2005, 7:47 p.m.

And your referencing a specific e-mail from Tina; is that right?

A. That's correct.

Q. And could you show us where that

13:36 is?

13:36 A. Well, right on Bates stamp 0329, forwarded messages from AdWords support. "Hello, Brett" is the heading, dated April 1, 2005. "Thank you for your e-mail" -- you want knee read it?

13:36 Q. No. I see it. So, in other words, did you contact Tina in some way and say, give me some information?

13:37 A. Yes.

13:37 Q. What did you say to her?

13:37 A. I think that's on the string further in the -- if we look at Bates stamp P0330.

13:37 Q. Yeah.

13:37 A. At the top of that document, "Hello." It's dated -- looks like my reply to Tina. It says, "I need the daily budget versus the daily charges first quarter last year for both accounts as soon as possible."

13:37 Q. Okay. And both accounts, you mean --

13:37 A. SECOA and CLRB.

13:37 Q. Okay. And why did you want that

B. Hanson

13:37 information.

13:37 A. To verify that there were

13:37 overcharges.

13:37 Q. And do you note that on

13:37 March 31, for example, Tina had communicated

13:37 to you that, and I'm looking on page 330, "As

13:38 I previously mentioned, charges accrued over

13:38 20 percent of your set daily budget will be

13:38 credited to your account at the end of the

13:38 month."

13:38 Do you see that?

13:38 A. I do.

13:38 Q. And have you -- do you have any

13:38 understanding about whether, in fact, charges

13:38 over 20 percent of your set daily budget are

13:38 in fact credited to your account?

13:38 A. I do not.

13:38 Q. In other words, you don't know

13:38 one way or the other whether they are?

13:38 A. I don't believe they are.

13:38 Q. Okay. And why is that?

13:38 A. Because I have with some

13:38 certainty tied out that the charges that were

13:38 reflected on the reports from Google servers

B. Hanson

to what was charged to our credit card match. Google's own reports from their servers verify my information.

Q. And when you say, "Google's own reports," you're referring to what exhibit?

A. Exhibit 36.

Q. Okay. And that's the -- that's the summary of information that's on your AdWords page; correct?

A. Right. The only information on Exhibit 37 -- 36, excuse me, that was added was the subtraction from the daily budget to the daily cost to come up with -- so we took -- I took the numbers that Google provided.

Q. Right. And, again, you haven't tried to do that with the invoices, have you?

A. I have not.

Q. And looking at the correspondence from Tina again on page 331, on March 30, 2005, I'm looking at this e-mail correspondence, it says, among other things she states to you, "In general, we try to keep your daily cost fluctuation to no more than 20 percent above your daily budget. And we make sure that within the 30-day billing period you are never charged more than the number of days in that billing period times your daily budget."

Do you see that?

A. Yes.

Q. And did you understand her to be communicating to you that in fact under the Google AdWords program you could be charged up to 120 percent of your daily budget per day?

A. Well, I dis -- I mean, I disagreed with the e-mails that I -- that I -- I disagreed with this -- this point. There's one e-mail that's not -- that's not in this document from one of Google's representatives that said, well, if you don't like our budget -- if you don't like the budget running over at where you're at, adjust your budget downward by 20 percent, then you won't go over whatever your magical number is. So I --

Q. So is it fair to say that at

B. Hanson

some point in time you did understand that whether you agreed with it or not, Google's practice under the AdWords program was to charge up to 120 percent of your daily budget?

A. Can you ask that question again, please.

Q. Is it fair to say that in some point in time you did understand that, whether you agreed with it or not, Google's practice under the AdWords program was to charge up to 120 percent of your daily budget?

A. Yes.

Q. And when did you come to that understanding?

A. Well, as I'm becoming frustrated with my -- with my dialogue with Google, my exchange of e-mails back and forth.

Q. Okay. And was it sometime in 2002 that you came to that understanding?

A. No. Quite to the contrary. If you look at Exhibit 36, which is an interesting point in itself, if you look on page P0507, overcharges don't start, really, there's not a significant accumulation of daily problems until -- there's a small one in 2005, $50.52. There was one -- that was in the first quarter of 2003.

The second quarter of 2003 there's --

Q. Sorry, can you slow down. What page are you on?

A. Oh, I'm sorry. P0507, the last page.

Q. Okay.

A. It really didn't become a huge concern from a dollars standpoint until the first quarter -- second quarter of 2004.

Q. And is that when you first raised it with Google?

A. Right around -- right around that point, I believe, yes.

Q. And is it fair to say that at that point in time, during the course of those communications --

A. We had never gone over budget before then. At that point it was like every

14:42 screen from the Google report.

14:42 Q. And was it the daily Google
14:42 report?

14:42 A. I don't remember.

14:42 Q. And in response to this, if you
14:42 look at page 5 of 33, actually, 6 of 33,
14:43 there's -- I'm sorry, 4 of 33, there's an
14:43 e-mail that begins, "Hello, Brett. It was a
14:43 pleasure speaking with you today. I've
14:43 included additional information below
14:43 regarding how our system deals with
14:43 overdelivery charges."

14:43 Do you see that?

14:43 A. Yes.

14:43 Q. And then going to 5 of 33, you
14:43 were told, "We try keep your daily cost
14:43 fluctuation to no more than 20 percent above
14:43 your daily budget."

14:43 Do you recall receiving that
14:43 information?

14:43 A. I don't remember.

14:43 Q. Any reason to doubt that you
14:43 didn't receive this e-mail?

14:43 A. I don't doubt it, no.

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14:43 Q. And then there you were also told, "We make sure that within a 30-day billing period you are never charged more than the number of days in that billing period times your daily budget."

14:44 Do you see that?

14:44 A. I do see that.

14:44 Q. And is it fair to say that by this time, March of '05, you understood that at least Google's practice was to charge no more than 20 percent above your daily budget?

14:44 A. Must have been, yes. If I misspoke before, I'll correct my answer to approximately March.

14:44 Q. And then if you look at page 4 of 33, at the top there's an e-mail from AdWords support, "Hello, Brett." It states, "I understand that you accrued charges over your daily budget again yesterday. I apologize for any inconvenience caused by this overdelivery. At this time, please feel free to reduce your daily budget in order to decrease the overall charges you accrue this week. However, as I previously mentioned,

B. Hanson

14:49 A. Not that I can recall.

14:49 Q. And if you look to -- under page 96 -- pardon me, tab 96. If you turn to page 5 of 41. There's an e-mail from you dated Thursday, 13 January 2005. "Hi, Bethanie. Can you please check our overcharges for our daily budgets by ads and account CLRB Hanson Industry LLC, customer ID: 934-396-2830."

14:50 Do you see that reference?

14:50 A. Yes, sir.

14:50 Q. And what prompted you to write that e-mail?

14:50 A. It appears I wrote it because we were being overcharged based on the daily budget.

14:50 Q. And how did you conclude that?

14:50 A. From Google's reports.

14:50 Q. Looking at the daily reports that you've described earlier today?

14:50 A. Yes, sir.

14:50 Q. And after -- and then you'll see the response, which is -- appears on the next page, 4 of 41. Do you see that? And in the

Q. And then she described in that phone call that Google would charge up to 120 percent of your daily budget on a given day but never charge more than the amount of your daily budget times the number of days in a month?

A. I don't believe that that's what it says in that e-mail.

Q. Did she explain that to you on the phone?

A. I don't -- I don't recall.

Q. Do you --

MR. BIDERMAN: Withdraw that question.

Q. Do you recall --

MR. BIDERMAN: Withdraw that question.

Q. At some point in time someone from Google told you, did they not, that you would be charged up to 120 percent of your daily budget for a given day but that your total charges for a month would not exceed your daily budget times the number of days in that month?

14:55 A. They may have mentioned -- they may have told me that, but I didn't agree to it, nor do I ever remember agreeing to such terms.

14:56 Q. So, in other words, it was communicated to you, but you didn't agree to it; is that what you're saying?

14:56 A. Yes.

14:56 MR. BIDERMAN: Let me just see if I've got any other e-mails to mark.

14:57 Q. And then going back to tab 96 again.

14:57 A. Okay.

14:57 Q. There's a e-mail to you at the bottom from AdWords support dated March 4, '05. Do you see that?

14:58 MR. LEVY: What page?

14:58 MR. BIDERMAN: I'm sorry. Page 1 of 41.

14:58 A. Yes.

14:58 Q. Okay. And then this is an e-mail from someone named Tina. Do you recall that, dealing with Tina P.?

14:58 A. Vaguely.

summary, January to November 2005, of CLRB Hanson Industries, bearing Bates Nos. 440 through 451, marked for identification as of this date.)

MR. BIDERMAN: Will be Exhibit 46.

Q. And what does Exhibit 46 reflect?

A. The billing summary from Google.

Q. Of whose account?

A. CLRB Hanson Industries.

Q. Okay. And what was the purpose of generating this document?

A. Just to show the billing for the year period of December '04 -- from January '05 through November 8th.

Q. And why did you generate that?

A. I'm not sure.

Q. And there's some handwriting, looks like it appears on the first page, little dots next to these numbers. Does that reflect any work on your part?

A. I don't know.

Q. For example, were you trying to

# C E R T I F I C A T E

STATE OF NEW YORK )

:ss

COUNTY OF NEW YORK )

I, AMY E. SIKORA, CRR, CSR, RPR, a Certified Realtime Reporter, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify that the foregoing deposition of BRETT R. HANSON was taken before me on the 18th day of August,2006;

That the said witness was duly sworn before the commencement of the testimony; that the said testimony was taken stenographically by me and then transcribed.

I further certify that I am not related by blood or marriage to any of the parties to this action nor interested directly or indirectly in the matter in controversy; nor am I in the employ of any of the counsel in this action.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of August, 2006.

Amy E Sikora

AMY E. SIKORA, CRR,